THE OBLIGATION OF AN EMPLOYER TO PROCURE EMERGENCY MEDICAL ATTENTION FOR AN EMPLOYEE INJURED WITHOUT HIS FAULT. — That the law does not seek to enforce moral duties,[1] as such, is axiomatic. The law of torts is concerned merely with restraining one from active conduct likely to injure others. One need not, therefore, move a finger to rescue a stranger from peril,[2] though, indeed, if he is responsible for that peril because of a breach of legal duty, it behooves him to lessen the evil consequences of an injury that he must pay for. The rare affirmative non-contract duties arise chiefly from certain relations, — such as master and servant, or carrier and passenger,[3] — and it is upon the basis of some relational duty, if at all, that we must justify a recent case holding a stone quarry company liable for the negligent failure of its superintendent to summon prompt medical assistance for an employee dangerously injured without the company's fault. *Hunicke* v. *Meramec Quarry Co.*, 172 S. W. 43 (Mo.).[4]

Aside from *dicta*,[5] this case seems the first to determine expressly that an employer has this relational duty when the employee is powerless to help himself. The class of cases most relied on by the principal case holds that certain agents have emergency authority to employ physicians on behalf of the principal, but these are at most *dicta*, for it may well fall within an agent's incidental powers to do certain acts which, though not obligatory upon the principal, are yet to his interest to have performed.[6] On the other hand, some cases denying such emergency

[1] "It is undoubtedly the moral duty of every person to extend others assistance when in danger. . . . And if such efforts should be omitted by anyone when they can be made, without imperiling his own life, he would by his conduct draw upon himself the just censure and reproach of good men, but that is the only punishment to which he would be subjected by society." Field, J., in United States *v.* Knowles, 4 Sawy. (U. S.) 517, 519.

[2] An extreme case held that a railroad company had a duty to stop and pick up trespassers run over without its fault. Whitesides *v.* Southern R. Co., 128 N. C. 229, 38 S. E. 878. This, of course, is at variance with the law in enforcing a purely humane obligation. Union Pacific R. Co. *v.* Cappier, 66 Kan. 649, 72 Pac. 281. *Cf.* Adams & Reid *v.* Southern Ry. Co., 125 N. C. 565, 34 S. E. 642.

[3] See Professor Pound in 25 INTERN. J. OF ETHICS, No. 1, ". . . in the law of torts, the existence of some relation calling for care or involving a duty of care is often decisive of liability. . . . In the absence of a relation that calls for action, the duty to be the Good Samaritan is moral only." For a discussion of the relational duty of public servants, see NOTES, p. 620.

[4] A statement of facts will be found in RECENT CASES, p. 638. It is possible that this case could have gone off on the ground that there was an active misfeasance which "made bad worse," for there was some evidence that a fellow servant was proposing to stop the flow of blood by tying a rope tightly around the leg of the injured man, when the superintendent stopped him, telling him "it would do no good." In such a case even the humble trespasser has rights. Northern Central Ry. Co. *v.* State, 29 Md. 420. But the court treats the case as one of a mere nonfeasance.

[5] In Ohio & Mississippi R. Co. *v.* Early, 141 Ind. 73, 40 N. E. 257, the legal obligation seems to have been recognized, but was held to have been fulfilled in that case where the employee declined further aid. Likewise, in Baptiste *v.* Baptiste, 130 La. 898, 58 So. 702.

[6] In Terre Haute & I. R. Co. *v.* McMurray, 98 Ind. 358, it is true the court considered that the emergency authority existed because of the employer's legal duty. But in Cairo & St. Louis R. Co. *v.* Mahoney, 82 Ill. 73, a legal obligation was expressly denied, and the agent's emergency authority was spelled out from various considerations. For a similar view see Union Pacific R. Co. *v.* Beatty, 35 Kan. 265, 268, 10 Pac. 845, 846–7; Sevier *v.* Birmingham, S. & T. R. Co., 92 Ala. 258, 260, 9 So. 405; Union Pacific R. Co. *v.* Winterbotham, 52 Kan. 433, 34 Pac. 1052.

powers would seem to negative a legal duty, for if the employer had an emergency duty to summon assistance it is a fair inference that his highest representative present, performing that duty, had authority to do so.[7] Furthermore, such a legal obligation seems to have been expressly denied.[8] But apart from authority, the employer's duty enforced in the principal case is a sane application of the principle underlying those better defined duties of supplying safe appliances, a reasonably safe place in which to work, and competent co-workers. The relational obligation arises because from the nature of things the servant must trust his safety in these respects to his master's care.[9] Without affirming that the master has a general duty to care for a sick or disabled servant,[10] it may without inconsistency be held that some obligation does exist where a grievous injury has incapacitated the servant from summoning assistance. Being an emergency duty,[11] it would extend only to requiring the employer to render such "first aids" as are accessible and, if necessary, to transport the servant to a place where he may get the needed attention.

What are the conditions under which this unusual relational duty should arise? It has been suggested that it should apply only in employments the inherent hazard of which renders grave injuries likely to occur.[12] Though such circumstances would make a stronger case,[13] it may be doubted whether this obscure line between dangerous and non-dangerous occupations should be the determining factor. Rather should the duty be limited by a twofold inquiry: first, whether the servant, injured in the execution of his employment, is in urgent need of aid which he himself is powerless to procure, and second, whether the work is of such a sort as to give the employer a peculiar ability to render or

[7] For a more detailed examination of the emergency cases, see LABATT, MASTER AND SERVANT, §§ 2003–2004. Many of the cases cited as denying an agent's authority to engage physicians do not appear to have been emergencies. St. Louis & K. C. R. Co. v. Olive, 40 Ill. App. 82. In others the question of emergency was not raised, though one apparently existed. Peninsula R. Co. *v.* Gary, 22 Fla. 356. Other cases limit this emergency authority of agents to employments, like railroading, that are especially hazardous. Holmes *v.* McAllister, 123 Mich. 493, 82 N. W. 220. Cushman *v.* Clover Land Coal & Mining Co., 170 Ind. 402, 84 N. E. 759.

[8] Makarsky *v.* Canadian Pacific R. Co., 15 Manitoba L. R. 53, 70; King *v.* Interstate C. S. R. Co., 23 R. I. 583, 51 Atl. 301.

[9] Professor Bohlen, in an article in 56 AM. L. REG. 217, 334, finds a tendency of the cases to apply "the general principle that whenever the servant must, from the very nature of the employment, encounter perils from which the master alone can protect him, the master owes him a duty to take care to afford him adequate protection."

[10] This was early settled in Wennall *v.* Adney, 3 Bos. & P. 247. But for a striking statutory reversal of this common-law conception, see, for example, the Illinois Workmen's Compensation Act, providing that "the employer shall provide first aid medical, surgical and hospital services, also medical, surgical and hospital services for a period not longer than eight weeks, not to exceed, however, the amount of $200." ILL. REVISED STATS., 1913, p. 1209.

[11] "This duty . . . only arises out of strict necessity and urgent exigency, where immediate attention thereto is demanded to save life or prevent great injury. The duty arises with the emergency and with it expires." Ohio & Mississippi R. Co. *v.* Early, *supra*, 141 Ind. 73, 81, 40 N. E. 257, 259.

[12] See the principal case, p. 54, and also Holmes *v.* McAllister, *supra*, 123 Mich. 493, 498, 82 N. W. 220, 221; Salter *v.* Nebraska Telephone Co., 79 Neb. 373, 376, 112 N. W. 600, 602.

[13] The typical case is railroading, wherein an employee is likely to be injured far from home, and unable to get aid save through the intervention of the employer.

summon assistance. For instance, if the driver of a delivery wagon is injured in a collision, there would be no duty of relief, for the service is not of a kind that gives the master any special or exclusive control over the situation. And this would be true, even in the fortuitous circumstances that the master was present at the scene.[14] On the other hand, if a domestic servant is helplessly injured in the pursuance of a service presumably beneficial to the master, his isolation inherent in the work compels him to depend upon that protection which the master has the peculiar means to afford.[15]

With these elements, it is submitted, the law should impose a relational duty. Although particular cases have sometimes been covered by statute,[16] there is room for a wise application and development of common-law principles in respect to the obligations which are cast upon the employer by this voluntarily assumed relation.

EFFECT OF AN UNACCEPTED PARDON UPON THE PRIVILEGE AGAINST SELF-INCRIMINATION. — The highwater mark of protection accorded the privilege against self-incrimination, supposedly reached by the dissent in *Brown* v. *Walker*,[1] has perhaps been exceeded in the recent case of *Burdick* v. *United States*, 236 U. S. 79, 35 Sup. Ct. 267.[2] In a unanimous decision the Supreme Court held that a witness does not lose his privilege against self-incrimination by being tendered an unconditional pardon which he refused to accept. This result was attained upon the grounds that the validity of a pardon depends upon acceptance;[3] that the witness is consequently not technically free from danger of punishment, although he had the means at hand to remove the danger; that he cannot be made to forego his right to refuse the pardon and avoid possible disgrace; and so his privilege still exists.

If the privilege against incrimination is removed, it may well be that the witness will be indirectly forced to accept the pardon. Inasmuch as it is revocable until accepted, if his evidence would disclose a strong case against him, he cannot safely trust to the future good will of the government, but must accept at once. But it is by no means certain that it is illegal to force the acceptance of a pardon. Clearly an accused has no right to demand prosecution, for a *nolle prosequi* may issue without

[14] The moral duty would be strong, but there is nothing in the nature of the relation which could give rise to a legal duty.

[15] The duty not being predicated upon any liability of the master for the initial injury, it matters not whether that injury came from the negligence of a fellow servant, from an "assumed" risk, or was partly due to contributory negligence.

[16] For example, a number of states require medical assistance to be provided for employees injured in mines. See LABATT, MASTER AND SERVANT, § 1890. In South Carolina, a railroad is required to give immediate notice to a physician "most accessible to the place of accident." CIVIL CODE, 1912, § 3228. And it may be remarked that in states where an employer under the Workmen's Compensation Acts must indemnify his employees for all injuries "arising out of and in the course of the employment," prompt and effective steps are apt to be taken to prevent an enhancement of liability.

[1] 161 U. S. 591, 610.

[2] For a statement of the case, see RECENT CASES, p. 642.

[3] United States *v.* Wilson, 7 Pet. (U. S.) 150.